IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Application No.1 of 2007
in
Criminal Writ Petition No.2123 of 2006

Krishnakumar Gupta ....Applicant
vs
State of Maharashtra and Ors. ... Respondents
with
Criminal Application No. 2 of 2007
in
Criminal Writ Petition No.2122 of 2006

Sonotron Trading Company Pvt Ltd .. Applicant.
vs
The State of Maharashtra and Ors. ... Respondents

Mr. Mahesh Jethmalani Senior Advocate with
Mr. H.P.Bhave i/b Bhave and Co for the applicants.
Mrs A.S. Pai A.P.P. for the Respondent-State.
Ms Harshida Kulkarni i/b Mr Shashank Thatte
for complainant.

CORAM: J.N. PATEL,Acg C.J. ,&
SMT. ROSHAN DALVI, J.
DATE: MARCH 13, 2007.

P.C.:

Both these applications as well as the writ petitions can be disposed of by this common order.

The petitioners had approached this Court seeking a Writ of Mandamus in the matter directing respondent No.5 to defreeze account No. 09582000003933 with Kotak Mahindra Bank Limited, 36-38A Nariman Bhavan 227, Nariman Point,

Mumbai 4000021 and another account No.0602320010361 with the HDFC Bank Ltd, Manekji Wadia Building, Nanik Motwani Marg, Fort, Mumbai 400023 and or anywhere instructed by respondent Nos. 2 and 3 and thereby allow the petitioners to operate the said accounts.

2. After hearing the learned counsel for the parties we had passed an order on 13th October, 2006 wherein we have admitted the petitions and passed interim order wherein we accepted the petitioners' offer to execute bank guarantee in Writ Petition No.2123 of 2006 to the extent of Rs. 80 lacs, which according to the prosecution was the moneys involved in the case, so that the entire bank accounts which had been frozen, are defreezed. Accordingly the petitioners have retained a sum of Rs.80 lacs in the Bank.

3. The petitioners have now moved these applications seeking withdrawal of the amount of Rs.80 lacs lying with Kotak Mahindra Bank Ltd in its Account No. 08122010000385 and utilise the same as also completely defreeze the said Account of the petitioners, on the basis that during the course of investigation nothing has been found showing complicity of the petitioners. On the other hand it has been revealed that gold

worth Rs.80 lacs was purchased by one Raichand Soni from M/s Sonotron Trading Company Pvt Ltd., which is one of the associated Companies and other enterprise of which Krishnakumar Gupta is the sole proprietor. The matter was earlier listed before another Bench. It appears that the original complainant in the matter Omprakash Bhandari gave a statement that he is not aggrieved against the petitioners, on the basis of which, this Court directed the parties to file consent terms by order dated 22nd December, 2006. Accordingly the complainant and the petitioners filed consent terms on 26th December, 2006. Subsequently the matter was listed before the Bench presided over by Smt. Ranjana Desai J, which observed that as the applications in substance are seeking review of the order passed by our Bench on 13th October, 2006, therefore same may be placed before the same Bench. That is how these applications came to be listed before us.

4. We have heard the learned counsel for the applicants and the complainant as also the learned Additional Public Prosecutor.

5. The learned Additional Public Prosecutor informs that the case is still under investigation and it will not be possible for her

to make any statement at this stage. Another fact which has been brought to our notice is that one of the prime suspects in the case, namely, Ravikumar Desai, who was arrested at Noida in U.P., was taken to Pune for the purpose of investigation and for further investigation to Hyderabad, from where he escaped.

6. Till this date, prima facie, the prosecution has not been able to pin point complicity of the petitioners in the alleged transaction. Even the complainant has no grievance against them. Therefore, we are inclined to grant the relief sought for by the petitioners, on the petitioners giving an undertaking to this Court that in case the prosecution requires them to deposit a sum of Rs.80 lacs in the course of investigation/trial, they shall jointly and severally undertake to deposit the said amount in the trial Court within one week from today and would extend all possible cooperation in the investigation of the case. On such undertaking being executed and filed in this Court, the impugned order issued by respondent Nos. 2 to 4 directing respondent No. 5 to freeze two accounts of the petitioners with Kotak Mahindra Bank Ltd, is quashed and set aside.

Rule is made absolute in the above terms and the petitions stand disposed of accordingly. Criminal Applications also stand disposed of accordingly.

ACTING CHIEF JUSTICE

SMT ROSHAN DALVI J.